88-114

NO:

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1988

MASHUQ AHMAD QURESHI, PETITIONER

et al

v.

COMMISSIONER OF INTERNAL REVENUE RESPONDENT

Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit.

MASHUQ AHMAD QURESHI
3701 So.George Mason Dr.
#110N,
Falls Church,VA 22041
(703) 379-8030

QUESTIONS PRESENTED FOR REVIEW

Regarding the year 1980

1. Did the petitioner not suffer a business loss of his money regardless of the fact as to how Ms. Poffe expended the money?

2. Was the petitioner not denied due process in the Tax Courts' denial to hearing of testimony of Ms. Poffe when she became available?

3. Was decision of the Bankruptcy Court in discharging Ms. Poffe against the petitioner not binding on the Tax Court under the full faith and credit clause of the U.S. Constitution, in finding that the petitioner suffered a business loss for the amount claimed?

Regarding the year 1981

1. Was there not enough evidence to support the petitioner's claim that there was no reasonable prospect of recovery of the loss in the year 1981?

2. Was the appellant not entitled to deduction for his business loss under I.R.C. 165 (a)?

PARTIES

Petitioner: MASHUQ AHMAD QURESHI, M.D.

Respondent: COMMISSIONER OF INTERNAL REVENUE

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TABLE OF AUTHORITIES

OPINION BELOW

The Court of Appeals entered its decision on May 30, 1988, Appendix I, and affirmed the decision of the Tax Court pursuant to latter's memorandum opinion of 03/23/87. Appendix 4 & 3. The Appeals Court denied petitioner's petition for rehearing and suggestion for rehearing en banc on April 22, 1988. Appendix 2.

JURISDICTION

On May 30, 1988, the Court of Appeals, entered judgment against the petitioner affirming the decision of the Tax Court of May 28, 1987 dismissing the petitioner's claim against the respondent.

On April 22, 1988 the petitioner's petition for rehearing and suggestion for rehearing en banc was denied.

The jurisdiction of the Court is invoked under title 28 U.S. Code section 1254 (1).

CONSTITUTION AND STATUTES INVOLVED

a) Amendment V of U.S. Constitution : Nor shall any person be deprived of life, liberty or property without due process of law.

b) Article IV of U.S. Constitution, section (1): Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state.

I.R.C. 165 (a): There shall be allowed as a deduction any loss

sustained during the taxable year and not compensated by Insurance or otherwise. I.R.C. 165 (c): In the case of an individual, the deduction under subsection (a) shall be limited to - (1) Losses incurred in trade or business.

STATEMENT OF THE CASE

Regarding the year 1980 : - The petitioner opened up a business of Bath and Things in 1979 in California through his employee Ms. Gislaine Poffe. In 1980, the petitioner transferred the business to Ms. Poffe in consideration for an agreement in which Ms. Poffe would have repaid the petitioner the amount of money that the latter had invested in the business.

On October 24, 1980, Ms. Poffe filed for Bankruptcy and was discharged against the petitioner by a California Bankruptcy Court order date April 13, 1981.

The petitioner claimed a deduction of $48,000 as a business bad debt in his 1980 Tax return. The repondent denied the deduction to the petitioner. The trial Court found for the respondent App.3&4 because Ms. Poffe could not be produced before the Court, inspite of his best efforts to produce her to come and testify as to how she expended the sums of money given to her by the petitioner for the business. Petitioner's motion for reconsideration of finding of fact and opinion for which Ms. Poffe was

available to come and give her live testimony and explain as to how she expended the money was denied App. 5 petitioner's motion to vocate or revise decision was also denied App. 6 Regarding the year 1981 The petitioner sustained a business loss of $67,500 in the year due to two transactions with Mr. Richard J. Gordon for $20,000 and $47,500 each. Mr. Gordon disappeared in June 1981 and was unavailable to the petitioner. The petitioner had no prospect of recovery of his business loss from any source in 1981 and has not recovered his loss so far to date. The petitioner claimed the loss of $67,500 as a business loss deduction in his tax return of 1981. The respondent

denied it claiming that the petitioner had reasonable prospect of recovery of his loss in 1981. The trial court found for the respondent App. 3 & 4. THE APPEALS COURT affirmed the findings of the trial court on March 30, 1988. The petitioner's petition for rehearing and suggestion for rehearing en banc were denied on April 22, 1988.

REASONS FOR GRANTING THE WRIT REGARDING THE YEAR 1980:

1) Since the trial court agreed that the petitioner had suffered the business loss of $48,000, then under the I.R.C. 165 (a) & (c), the petitioner was entitled to deduction regardless of inability of Ms. Poffe to testify as to how she used the money for the business.

2) The Trial Court was bound by the decision of the California Bankruptcy Court in the discharge of Ms. Poffe against the petitioner for the amount of $48,000 under the full faith and credit clause of U.S. Constitution, Article IV. The decision proved that the petitioner had suffered a business loss of $48,000 regardless of how Ms. Poffe spent the money given to her for business by the petitioner and regardless of what Ms. Poffe owed to other creditors for the Bath & Things business which was her business in 1980 as found by the Bankruptcy Court.

REGARDING THE YEAR 1981

1) The petitoner had no reasonable prospect of recovery of his loss in 1981 and has not recovered anything to date, viz seven years since the loss. Therefore under I.R.C. 165 (a) & (c), the petitioner's business loss was certain in the year of the loss.

2) The petitioner was not held to the standard of being an incurable optimist simply because he filed suit against third parties in 1981 to try to recover his losses.

U.S. v. S.S. Dental Manufacturing Co. 274 - U.S. 398 (1927) The Supreme Court said:

"The quoted regulations, consistently with the statute contemplate that a loss may be come complete enough for deduction without the Taxpayers establishing that there was no possiblity of an eventual recoupment... The taxing act does not require the taxpayer to be an incorrigible optimist."

CONCLUSION

Under rule 52 (a) of the F.R.C.P. 52 (a) the appeals court should have found for the petitioner, because the findings of fact by the trial court were completely in error.
There was misapplication of the I.R.C. and the case law.

There was denial of due process and the full faith and credit clause of U.S. Constitution. There is conflict in the circuits.

Therefore the petitioner requests that a writ of certiorari issue to review the judgment of the U.S. Court of Appeals of the Fourth Circuit.

Respectfully submitted,

MASHUQ AHMAD QURESHI

Petitioner Pro SE

3701 South George Mason Dr.

#110N

Falls Church, VA 22041

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

APPENDIX (1)

No. 87-3151

MASHUQ AHMAD QURESHI;

RUTH QURESHI Petitioners - Appellants

v.

INTERNAL REVENUE SERVICE Respondent - Appellee

Appeal from the United States Tax Court.

(Tax Ct. No. 30173-84)

Submitted: February 29, 1988

Decided: March 30, 1988

PER CURIAM:

Mashuq and Ruth Qureshi appeal from a Tax Court judgment upholding the Internal Revenue Service's deficiency determinations for tax years 1980 and 1981. The Tax Court found that Qureshis were not entitled to bad business debt and theft loss deductions for those tax years.

A review of the record, the opinion of the Tax Court, and the informal briefs submitted by the parties to this appeal reveals that the Tax Court's determinations are not "clearly erroneous." Wright v. Commissioner, 756 F.2d 1039, 1042 (4th Cir. 1985). We accordingly affirm the decision of the Tax Court based on its reasoning. Qureshi v. Internal Revenue Service, Tax Ct.

No. 30173-84 (May 28, 1987).

Because the facts and legal contentions are adequately developed in the materials before this Court and oral argument would not aid in the decisional process, we dispense with argument in this case. Fed. R. App. P. 34(a)(3).

AFFIRMED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 87-3151

Mashuq Ahmad Qureshi,et al Petitioners-Appellant

versus

Internal Revenue Service Respondent- Appellee

APPENDIX (2)

F I L E D

APR 22 1988

U.S. Court of Appeals

Fourth Circuit

On Petition for Rehearing.

O R D E R

Upon consideration of the appellants' petition for rehearing,

IT IS ORDERED that the petition for rehearing is denied.

Entered at the direction of Judge Sprouse with the concurrence of Judge Russell and Judge Widener.

For the Court,

JOHN M. GREACEN

_____

CLERK

T. C. Memo. 1987-153

Appendix (3)

UNITED STATES TAX COURT

MASHUQ AHMAD QURESHI AND RUTH QURESHI,

Petitioners v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

Docket No. 30173-84. Filed March 23, 1987.

Mashuq Ahmad Qureshi, pro se.

Marshall Feiring, for the respondent.

MEMORANDUM FINDINGS OF FACTS

AND OPINION

TANNENWALD, Judge: Respondent determined the following deficiencies in petitioners' Federal income taxes:

Taxable Year	Deficiency
1980	$25,967
1981	25,913

After, concessions, the issues for decision are whether petioners are entitled to deductions for (1) a bad debt or an ordinary loss with respect to the taxable year 1980, and (2) a theft loss with respect to the taxable year 1981.

FINDINGS OF FACT

Some of the facts have been stipulated and are so found. This reference incorporates the stipulations of facts and attached exhibits.

Petitioners are husband an wife and resident in East Falls Church, Virginia at the time they filed their petition in this case. They timely filed joint Federal

Income tax returns for the taxable years 1980 and 1981 with the Internal Revenue Service Center, Memphis, Tennessee.

From 1978 through 1981, Mashuq Ahmad Qureshi ("petitioner") carried on a substantial medical practice. In January 1978, Gislaine Poffe ("Ppffe") became petitioner's patient, and thereafter saw petitioner about one day a week for medical reasons. Poffe lived in the building where petitioner's office was located and helped petitioner, without payment, by performing a few chores for the office.

During the late summer and early fall of 1979, Poffe and petitioner began to discuss the possible formation of a bath accessory business.

On or about October 1, 1979, Poffe moved to California to be closer to her daughter who lived there and to be with her friend, General Harold Strack, who had been recently transferred there. Petitioner gave her a check, dated September 17, 1979, in the amount of $10,000, to start the aformetioned bath accessory business, which Poffe and petitioner decided to name "Bath 'N' Things" ("BNT). Prior to her move, petitioner also gave Poffe a Fiat 128 automobile and Poffe turned over her 1979 Buick LeSabre automobile to petitioner.

Upon arriving in California Poffe began setting up BNT, and was reponsible for selecting the business' location, inventory, advertising, and accountant.

On October 4, 1979, petitioner sent

Poffe a letter in which he stated that Poffe had complete authority to sign on behalf any papers or license application pertaining to our business venture which she will start in California on or About November 1, 1979. She will also have complete authority to make any decision that will arise concerning this business venture and will report to me on a monthly basis with the books concerning said venture.

BNT opened for business in December of 1979. Petitioners filed a joint Federal income tax return for the 1979 taxable year that included a Schedule C reflecting the income and expenses for BNT and showing a net loss for the year of $8,477. Petitioner did not visit BNT during 1979, but Poffe did inform him of its progress.

In addition to the original $10,000

petitioner sent to Poffe, petitioner transferred to Poffe during 1979 and additional $15,000 in order to get BNT going. Petitioner also transferred $5,000 directly to BNT during 1979 for the purpose of carrying on the business. Petitioner looked to recover the $30,000 transferred to Poffe and BNT in 1979 out of expected profits. Petitioner did not look to Poffe for repayment of these amounts and did not receive any notes or any agreements concerning the payment of pringipal or interest. In addition, petitioner knew of no assets that Poffe had that would enable her to repay these amounts. Moreover, it was always understood that petitioner owned the business and that Poffe was only a salaried employee of BNT.

Petitioner sent a letter to Poffe, dated January 1, 1980, which stated that BNT was being transferred to Poffe as her own business with ownership of all contents and with liability for all leases, expenses, bills, etc. Neither petitioner nor Poffe considered that this letter effected and actual transfer of BNT to Poffe or any change in their owner-employee relationship. Rather, the sole purpose of the letter was to enable Poffe to raise additional capital for the business in the form of loans from local banks.[1]

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[1] Petitioner testified that "business has [sic] been proffered over to [Poffe] for the purpose of allowing her to be able to raise the loans free of the difficulty that would arise for a person

On January 7, 1980 petitioner wired $5,000 to the bank account of BNT. On February 5, 1980 petitioner wired an additional $6,000 to BNT's account. With respect to both wire transfers, petitioner did not receive any notes or any agreements concerning the payment of principal or interest. Petitioner considered notes and security unnecessary because he considered Poffe to be his employee and not his debtor. As with the $30,000 advanced to Poffe in 1979 (see pp.3-4, supra), petitioner looked to recover this $11,000 our of BNT's expected profits.

(cont. 1)
doing business in California and the principle [sic] being in Virginia. But, we had the understanding that I will be employer and she was the employee."

About the time of these transfers, petitioner commissioned a consultant to determine whether BNT had the potential to be successful and was advised that the business was likely to fail. On March 25, 1980, the lease covering the premises occupied by BNT was transferred to Poffe. On May 28, 1980, petitioner gave a letter to POffe stating that Poffe had paid petitioner the sum of $41,366.71 owed to him since February 18, 1980. However, no actual payment accompanied this letter and as with the paper transfer of BNT discussed on p. 4, supra, petitioner's purpose in providing this letter was to enable Poffe to raise additional capital.

On or about May 30, 1980, petitioner and Poffe entered into an agreement ("Agreement") in which Poffe agreed to repay

petitioner $41,366.71 in exchange for being given full ownership of BNT. Poffe also agreed to sell an apartment belonging to petitioner and to use the proceeds in running BNT. Poffe agreed to repay petitioner the $41,366.71 and the proceeds from the sale of the apartment, at a rate of $12,000 principal and 6 percent interest per annum, commencing on January 1, 1981.

BNT closed in June or July of 1980. From August through the end of 1980, petitoner sent Poffe additional funds in the form of checks totalling $4,100. At no time during 1980 did petitioner visit BNT.

On October 24, 1980, Poffe filed for bankruptcy in her own name and under the name of BNT. Poffe's bankruptcy estate was a "no asset" estate, and in her schedule

of unsecured claims Poffe listed a $48,000 debt to petitioner. This schedule listed total unsecured claims (including petitioner's) of $74,595. Poffe was declared bankrupt and her debts were discharged pursuant to a court order dated April 13, 1981. That order specifically referred to Poffe as "doing business as BNT."

In their 1980 reutrn, petitioners claimed a deduction of $48,000 for a business bad debt arising from BNT. Petitioners conceded at trial that this $48,000 deduction included the $8,477 loss that had already been deducted with respect to BNT in petitioners' 1979 return. See p. 3, supra.

Petitoner met R. J. Gordon ("Gordon") in March of 198?. Gordon approached

On January 7, 1980 petitioner wired $5,000 to the bank account of BNT. On February 5, 1980 petitioner wired an additional $6,000 to BNT's account. With respect to both wire transfers, petitioner did not look for Poffe for repayment of these amounts and did not receive any notes or any agreements concerning the payment of principal or interest. Petitioner considered notes and security unnecessary because he considered advance to Poffe in 1979 (see pp. 3-4, supra), petitioner commissioned a consultant to determine whether BNT had the potential to be successful and was advised that the business was likely to fail.

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doing business in California and the principle [sic] being in Virginia. But, we had

petitioner with several new investment opportunities and petitioner was persuaded to set up a business called M.A.Q. Associates ("MAQ") to invest in ventures organized by Gordon. On or about April 1, 1981, petitioner delivered 2 checks to Gordon. Both checks were drawn on the MAQ checking account maintained by petitioner at National Savings & Trust Company ("NS&T").

The first check, in the amount of $47,500, was payable to the order of the R.J. Gordon Corporation ("Gordon Corporation") and was deposited with the Security National Bank ("SNB") on April 2, 1981. Petitioner delivered the check in payment for certain telephone equipment ("Equipment") which petitioner leased to back to the Gordon Corporation. Petitioner financed the

with the proceeds of a personal loan from NS&T. The loan was arranged by Gordon, was based on the financial strength of petitioner, and was collateralized by the Equipment and lease on the Equipment. Gordon purchased the Equipment from the Telephone Corporation of America ("Telcoa").

The second check delivered to Gordon, in the amount of $20,000 was payable to the order of Medac General Partnership II ("Medac II). The check was delivered in exchange for two interests in Medac II. Although payable to Medac II, the second check was endorsed by Gordon, payable to an entity called Medtronics, Inc., and was deposited with SNB on April 2, 1981.

Petitioner signed a partnership agreement with respect to Medac II, which was a District of Columbia general partnership

formed on May 15, 1981. Paragraph 4 of the agreement provided, in part, that the business of Medac II would be the ownership, operation and leasing of certain computer hardware, software and systems. Paragraph 10.1 in the agreement provided, in part, that MEDAC, Inc. would manage the business of Medac II. Paragraph 12 provided that Medac II would maintain a bank account at NS&T and that checks drawn on the account would be signed by MEDAC, Inc.

On May 26, 1981, Medac II opened an account at NS&T. Gordon was authorized to sign any and all checks on behalf of Medac II.

On June 30, 1981, Mr. Schwarzwald ("Schwarzwald"), a vice-president of Telcoa, and Mr. Yelatalo, Telcoa's president, removed the Equipment from Gordon's offices

with the help of some technicians from Telcoa. The police came but did not prevent the Equipment from being removed.

Gordon left the Washington area and was unavailable after the latter part of June 1981. Prior to leaving, Gordon was making the lease payments on the Equipment. After July 4, 1981, petitioner was informed that Gordon had left and soon thereafter retained and attorney named Daniel O'Connell ("O'Connell") to look into Gordon's desappearance and the prospects of recovering the money he had invested with Gordon.

O'Connell discussed the situation with NS&T, FBI agents and at least one other attoerney, and contacted Schwarzwald with respect to Telcoa's repossession of the Equipment. Schwarzwald rejected O'Connell's claim that the Equipment belonged to petitioner

and informed O'Connell that the Equipment had been repossessed because Telcoa had received only partial payment from Gordon with respect to the Equipment's purchase price. By early August, based on these preliminary investigations, O'Connell suspected that persons other than Gordon might be liable to petitioner, namely the two banks involved in making the loan to petitioner and processing the checks from which Gordon received petitioner's funds, as well as Telcoa. However, O'Connell advised petitioner that (1) developing evidence and doing research to determine the validity of these suspecious would be expensive and might prove fruitless; and (2) the entities which might be liable for losses would be resistant to claims and that litigation would be prolonged and expensive.

Thereafter, petitioner ceased retaining O'Connell's services and obtained the information O'Connell had gathered during his efforts on petitioner's behalf.

In July 1981, petitioner also contacted Robert Lavery ("Lavery"), a loan officer at NS&T, and requested from him the documents used in connection with the loan that financed petitioner's purchase of the Equipment. Lavery sent the documents to petitioner on Luly 9, 1981. In 1981, petitioner also contacted Robert Willey ("Willey"), a vice president at NS&T. At that time, Willey refused to provide petitioner with the signature cards for Medac II.

On February 22, 1982, petitioner again contacted Willey and again requested the signature cards fro Medac II. In a

letter, dated March 12, 1982, Willey provided petitioner with the signature cards and Medac II's certificate and authorization. These documents indicated that the Medac II account was not opened until May 26, 1981 but that Gordon was an authorized signer of checks for Medac II.

Thereafter, petitioner went to visit Mr. David Duliber at the Office of the Comptroller of the Currency, who advised him that the endorsement on the Medac II check was improper and suggested to petitioner that he retain the services of an attorney. Accordingly, petitioner engaged the services of Mr. Mark Sandground ("Sandground") because he had heard that Gordon was now in jain and that Sandground had previously interviewed him there with respect to other matters. Petitioner also

contacted the U.S. Attorney for the District of Columbia who informed petitioner that he would not prosecute the case because it was a civil matter.

Petitioner engaged Sandground for only a short time and, in May 1982, retained 2 private investigators, Antonio Braun and Ginny Brown. Petitioner and the investigators approached representatives of NS&T claiming that NS&T had been at fault with respect to honoring the Medac II endorsement and for approving the Equipment loan in light of Gordon's allegedly fraudulent activities. NS&T's representatives denied any wrongdoing on the bank's part, and the investigators then contacted Peter Leyton ("Leyton") on petitoner's behalf. Leyton was a practicing attorney and, on or about April 1, 1982 agreed to represent petitioner in

trying to recover sums on behalf of petitioner with respect to Gordon Corporation, NS&T, SNB and Telcoa.

In the summer of 1982, Leyton met with Phyllis Archer ("Archer"), whose name had been given to him by Antonio Braun. Archer had been a personal assistant and secretary to Gordon in the fall of 1980 and the spring of 1981. Archer was aware that petitioner had paid for the Equipment and that the Equipment had been installed in Gordon's offices. Furthermore, Archer had maintained a check ledger while working for Gordon, which reflected a $24,000 payment to Telcoa for the Equipment.

In July 1982, Leyton met with Schwarzwald and Stanley Lipschultz ("Lipshultz"), an attorney for Telcoa.

Lipschultz and Schwarzwald were not willing to make any settlement at that time, but gave Gordon's ledger to Leyton. Leyton had also contacted representatives of NS&T on behalf of petitioner.

Leyton felt that petitioner had valid claims but they would be difficult to establish. However, petitioner was not able to pay Leyton any more fees and Leyton was not preprared to represent petitioner on a contingency basis, and their relationship terminated on or about August 31, 1982. Leyton turned all his records, including the ledger, over to petitioner.

On December 28, 1982, petitioner commenced a pro se action against NS&T, SNB and Telcoa in the United States District Court for the District of Columbia. On or

about March 23, 1983, petitioner's motion to add Gordon as a party defendant was granted. The action against Gordon has yet to be tried.

On or about August 11, 1982, SNB filed a motion for summary judgment. SNB withdrew this motion and on or about July 26, 1984 there was a trial of petitioner's actions against SNB. Judgment was for SNB. Petitioner appealed to the United States Court of appeals dismissed petitioner's appeal for want of a final judgment. The Court of Appeals stated that, after final judgment was entered in the district court with respect to all the claims and parties in the case, petitioner would have an opportunity to present any claim he might have on appeal.

By order of the District Court, dated

which petitioners would have us believe is evidence of the loan, and petitioner's own self-serving statements as to the bona fides of the transaction. However, in light of the totality of the other evidence we have seen and heard, we are convinced that no bona fide debt was ever intended to be created between Poffe and petitioner, and accordingly we find that petitioners have failed to carry their burden of proof.

To begin with, petitioner has conceded throughout the course of this litigation that, at all times prior to the Agreement, he was the sole owner of BNT and Poffe was no more than his employee, that he never looked to Poffe for repayment of the $41,000 he advanced to her to run the business, and that he expected to recover these amounts solely our of the future

under section 166 there must exist a bona fide debt "which arises from a debtor-creditor relationship based upon a valid and enforceable obligation to pay a fixed or determinable sum of money." Section 1.166-1(c), Income Tax Regs. Moreover, "Whether a transfer of money creates a bona fide debt depends upon the existence of in intent by both parties, substantially contemporaneous to the time of such transfer, to establish an enforceable obligation of repayment." Delta Plastics Corp. v. Commissioner, 54 T.C. 1287, 1291 (1970). The burden of proving that such a debt exists is on petitioners. Zarnow v. Commissioner, 48 T.C. 213, 218 (1967); Rule 142(a).

Petitioners' position is essentially based on the existence of the Agreement,

OPINION

The first issue is whether petitioners are entitled to either a bad debt deduction under section 166[3] or a deduction for an ordinary loss under section 165. Petitioners contend that the May 30, 1980 Agreement between petitioner and Poffe established a bona fide debter-creditor relationship and that as a result of Poffe's subsequent bankruptcy the debt became worthless and petitioners are thus entitled to a bad debt deduction for the 1980 taxable year. Respondent, on the other hand, argues that the owner-employee relationship between petitioner and Poffe was never altered and that no valid debt was ever created between them, and that the Agreement was merely and device to shield petitioner from BNT's creditors. Moreover, respondent contends

that petitioner from BNT's creditors. Moreover, repondent contends that petitioners are not entitled to any deductions for the losses allegedly incurred by BNT because such losses cannot be substantiated or approximated. For the reasons discussed herein, we agree with respondent.

Section 166(a) provides that "[t]here shall be allowed as a deduction any debt which becomes worthless within the taxable year." To be entitled to such a deduction

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3 Unless otherwise indicated, all section references are to the Internal Revenue Code of 1954, as amended and in effect during the years in issue, and all Rule references are to the Rules of Practice and Procedure of this Court.

November 18, 1983, Telcoa's motion to sever and have a separate trial for petitioner's claims against it was granted. On or about August 29, 1985, petitioner won a jury verdict in the amount of $17,440 against Telcoa.[2]

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[2] With respect to petitioner's suit against NS&T, petitioner testified that "NS&T Bank was absolved by the U.S.District Court on the grounds that they relied on the warranty of the Security National Bank and honored the check of $20,000."

profits of BNT. Under these circumstances, we think it strange indeed that Poffe would suddenly agree to be personally liable for these amounts. Moreover, we think the fact that petitioner continued to send Poffe funds totalling $4,100 even after the Agreement was signed, allegedly to help Poffe wind down the business and institute bankruptcy proceedings, is further evidence that petitioner was still the owner of BNT and that Agreement was not evidence of debt and a transfer of BNT to Poffe, but rather, as respondent contends, merely a device petitioner used in an attempt to shield

himself from BNT's creditors.[4] We think the fact that petitioner admittedly transferred BNT to Poffe on paper once before (see letter of January 1, 1980, p. 4, supra), solely for the purpose of persuading local banks to treat her as BNT's owner so that she could acquire additional capital in the form of loans, lends credence to such a conclusion.

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[4] Petitioner testified that "I'm at a distance and I want to salvage and not lose everything, therefore taht was the next matter of business expediency that I said to her, 'Look, you use this money for business or profit for me so that if things--if liabilities come on I, being at a distance, should not be liable for any acts of non-payment or torts of whatever."

Furthermore, General Strack, who was a close friend of both Poffe and petitioner and familiar with the ongoing business relationship between the two, testified that, at all times during the course of the business, petitioner was the owner of BNT and Poffe was his employee, and that this relationship had never changed.

Finally, even assuming arguendo that petitioner intended to transfer BNT to Poffe, "debts may not be deducted as bad debts unless they had value when acquired or created." Person v. Commissioner, 27 T.C. 330, 338 (1956), affd. 253 F.2d 928 (3d Cir. 1958). Similarly, a taxpayer who extends credit with knowledge that he will not be paid is considered to have made a gratuity and not to have created a debt. See Putnam v. Commissioner, 352 U.S.82,88(1956)

At the time Poffe agreed to repay petitioner the $41,366.71, petitioner was well aware that the business was failing and that the prospect of BNT generating any revenues to repay the "loan" was highly unlikely. Moreover, petitioner required no security for the "loan," although he was quite aware that Poffe had no assets to speak of and no visible means of support other than BNT. Thus, it seems obvious to this Court that the purported debt had no value when it was allegedly created and that petitioner never intended to be repaid. Cf. C.M. Gooch Lumber Sales Co. v. Commissioner, 49 T.C. 649, 659 (1968). Accordingly, we find that no debt was in fact created by the execution of the Agreement and that repondent properly disallowed petitioners' bad debt deduction.

We also find that petitioner are not entitled to a deduction for an ordinary loss under section 165. Section 165 (a) provides, as a general rule, that "[t]here shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise." Section 165(c) provides, in pertinent part, that

In the case of an individual, the deduction under subsection (a) shall be limited to--

(1) losses incurred in a trade or business;

(2) losses incurred in any transaction entered into for profit, though not connected with a trade or business;

Respondent has not sought a disallowance of petitioner's claimed

deduction on the grounds that petitioner's activities with respect to BNT did not constitute the carrying on of a trade or business or that petitioner was not engaged in an activity entered into for profit. Similarly, respondent does not dispute that petitioner transferred to Poffe and/or the account of BNT some $45,100 during 1979 and 1980, or that BNT was a viable business entity through June, 1980. Rather, respondent argues that petitioners have not demostrated that the funds sent to Poffe, or a determinable portion thereof, were used in connection with the business of running BNT and therefore petitioners have failed to prove that they are entitled to deduct these amounts as business losses--a burden which lies squarely on petitioners' shoulders.

Welch v. Helvering, 290 U.S. 111 (1933); Rule 142(a). We agree with respondent.

Petitioners have offered no evidence to substantiate their claims that the funds transferred to Poffe were in fact expended in the furtherance of petitioner's business. Petitioners have not only been unable to produce BNT's books and records, but petitioner admitted that he has never seen them and does not even know if they exist. Petitioner had never visited the store, has never seen its lease or produced it at trial, and even his own notes with respect to BNT's rent and Poffe's salary were based upon Poffe's alleged representations to him. Moreover, we were not able to benefit from the testimony of Poffe because petitioner informed us that she was unavailable for the trial.

The fact of the matter is that, given our holding that BNT was at all pertinent times the business of petitioner, any loss would be the loss of that business deductible in the same manner in which petitioners claimed such a deduction for 1979. We have no doubt that petitioner advanced substantial funds to the business of BNT and that BNT had substantial expenses in 1980, but we have no way of knowing to what extent the expenses were offset by receipts or whether any of the funds were expanded for purposes not properly attributable to the business of BNT. See Stuart v. Commissioner, 38B.T.A. 1147, 1153 (1938). Moreover, in view of the fact that the order discharging Poffe from bankruptcy described her as "doing business as BNT," it would appear that

petitioner was relieved of liability for BNT's debts which were really his debts incurred by Poffe on his behalf as owner of BNT. Under such circumstances, petitioner may have not suffered anywhere near the amount of the loss he claims. See Parkford v. Commissioner, 133 F.2d 249, 251 (9th Cir. 1943), affg. 45 B.T.A. 461, 472 (1941).

The long and the short of the matter is that we cannot begin to approximate petitioners' losses for they have presented what we consider no reasonable bases upon which we can base such an estimate. Coloman v. Commissioner, 540 F.2d 427 (9th Cir. 1976), affg. a Memorandum Opinion of this Court. That petitioners encountered what they apparently considered insurmountable difficulties in obtaining

and presenting sufficient probative evidence does not relieve them of their burden of proof. Burnet v. Houston, 283 U.S. 223, 228 (1931); Interlochen Co. v. Commissioner, 232 F.2d 873, 879 (4th Cir. 1956), affg. 24 T.C. 1000 (1955). Accordingly, we find that petitioners have failed to carry their burden of proof and are not entitled to a deduction for a business loss under section 165.[5]

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[5] Similarly, we find that petitioners have failed to prove that the Fiat automobile transferred to Poffe was used in BNT's business, and thus are not entitled to a business loss deduction with respect thereto.

The next issue is whether petitioners are entitled to deductions under section 165(c)(3) for losses of property arising from theft. Petitioners contend that they suffered losses in 1981 arising from theft with respect to the $67,500 in funds petitioner invested with respect to the Medac II and Equipment transactions he entered into with Gordon. Respondent argues that not only were petitioners' purported losses with respect to these transactions not the result of thefts as contemplated under section 165(c)(3), but that, in 1981, petitioners still had a reasonable prospect of recovering these funds and thus are not entitled to their claimed deductions. For the reasons discussed herein, we agree with respondent.

Section 165(e) provides that "any loss

arising from theft shall be treated as sustained during the taxable year in which the taxpayer discovers such loss." Moreover, "Whether or not the activity constitutes a theft is determined by the law of the State where the loss was sustained." Paine v. Commissioner, 63 T.C. 736, 740 (1975), affd. without published opinion 523 F. 2d 1053 (5th Cir. 1975). Because we believe that as of the end of 1981 petitioners had a reasonable prospect of recovery, we have no need to address the question whether the loss was from a theft (a matter as to which we believe there is considerable doubt on the record before us).

Section 1.165-1(d)(3), Income Tax Regs., provides, in pertinent part, that if in the year of discovery there exists

a claim for reimbursement with respect to which there is a reasonable prospect of recovery, no portion of the loss with respect to which reimbursement may be received is sustained, for purposes of section 165, until the taxable year in which it can be ascertained with reasonable certainty whether or not such rreimbursement will be received.

It is well settled that "[a] reasonable prospect of recovery exists when the taxpayer has bona fide claims for recoupment from third parties or ot rwise, and when there is a substantial possibility that such claims will be decided in his favor."

Ramsay Scarlett & CO.v. Commissioner, 61 T.C. 795, 811 (1974), affd. 521 F.2d 786

(4th Cir. 1975). Such a determination must be based on "an objective inquiry requiring an examination of the facts and circumstances surrounding the deduction." Dawn v. Commissioner, 675 F.2d 1077, 1078 (9th Cir. 1982), affg. a Memorandum Opinion of this Court. See also Boehm v. Commissioner, 326 U.S. 287, 292-293 (1945); Ramsay Scarlett & CO.v. Commissioner, supra at 811-812. Accordingly, although a taxpayer's "attitude and conduct are not to be ignored" in making this determination, Boehm v. Commissioner, supra at 293, they are not to be the "controlling or sole criterion," for the ultimate question to be decided is whether a loss has "been sustained in fact during the taxable year." 326 U.S. at 292. (Emphasis supplied in the original .) See also Ramsay Scarlett & Co.

v. Commissioner, supra at 812.

In retrospect, based on the events that actually transpired, petitioers do not now argue that bona fide claims for reimbursement against Gordon, Telcoa and SNB (and/or NS&T) did not exist in 1981. To the contrary, petitioners have demostrated that, even aside from Gordon's questionable and apparently fraudulent dealings with petitioner, petitioner had actionable claims against SNB (and/or NS&T) and Telcoa under various sections of the Uniform Commercial Code of the District of

Columbia.[6] However, petitioers assert they are still entitled to their claimed deductions because they believed no reasonable prospect

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6 See, e.g., D.C. Code Ann. sections 28:2-403, 28:4-207 and 28:9-307 (1981). Based upon our review of these and other relevant sections, as well as the evidence we have seen and heard, we are satisfied that, as of the end of 1981, petitioners had actionable claims and a reasonable prospect of recovery against the aforementioned parties. However, we see no need to offer a detailed opinion as to the merits of these claims. See Parmelee Transportation Co. v. United States, 351 F.2d 619, 628 (Ct. Cl. 1965).

of recovery existed at the end of 1981 taxable year based upon their assertions that (1) certain information was not yet apparent or made available to petitioner upon which he could base such claims, and (2) petitioner's lawyer O'Connell, while stating his suspicions that the aforementioned parties were liable to petitioner, advised him that an investigation and any subsequent litigation to develop these claims might be prolonged and expensive, and possibly fruitless.

Although we do not question the sincerity of petitioners' beliefs, in light of the facts and circumstances as they existed in 1981, we conclude that petitioers have not shown that a reasonable prospect of recovery did not exist during that taxable year.

To begin with, we do not interpret

'Connell's conclusions as suggesting that no reasonable prospect of recovery existed in 1981. Although O'Connell cautioned petitioner as to the risks associated with pursuing his claims, he made clear that he felt potential liability did exist. Moreover, in view of the fact that O'Connell had undertaken what we consider to be only a preliminary investigation, we think the information that had already been unearthed by both him and petitione, when coupled with O'Connell's suspicions, warranted petitioner further to pursue the matter, especially in light of the larg amounts he was seeking to recover. While it was surely petitioner's right not to expend additional monies in furtherance of investigating the bona fides of his claims, such inaction

does not entitle petitioners to a deduction under section 165.

Furthermore, we note that petitioners, in essence, urge that we adopt a standard under which, in effect, taxpayers who are told by their attorneys that claims against others will probable be unsuccessful will be allowed to take a loss deduction, on the basis of such advise alone, in the year in which such advise is given. For a taxpayer in such a situation, according to petitioners, is acting under a reasonable subjective belief that his property has been irretrievably lost. [Ramsay Scarlett & Co. v. Commissioner, 61 T.C. at 812.] However, as we discussed supra at pp. 20-21 the proper standard to apply is an objective one, and accordingly petitioners reliance

on O'Connell's conclusions as sustaining their contention that no reasonable prospect of recovery existed, is misplaced. Ramsay Scarlett & Co. v. Commissioner, supra at 812. See also Huey v. Commissioner T.C. Memo. 1985-348.

Similarly, the fact that petitioners suggest that petitioner was unaware until after 1981 of certain facts that he contends were necessary for the successful pursuit of his claims. e.g., that Gordon had endorsed and deposited the Medac II check some 7 weeks prior to even the opening of the Medac II account or that Telcoa had received a $24,000 partial payment for lthe Equipment, does not tilt the scales in petitioners' favor. Under an objective standard, the test is whether given the facts as they occurred in 1981

did petitioner have a reasonable prospect of recovery under local law at the end of that taxable year, not whether petitioner had as yet collected enough information to prosecute a successful legal action. Moreover, as we have previously indicated, see pp. 22-23, supra, even if petitioner was unaware of certain facts relevant to his claims for recovery, we think he had been pre ented with enough information by the close of the taxable year to arouse sufficient suspicion on his part that, at the very least, he continue the investigation.

Furthermore, we think it significant that when petitioners filed their return On June 15, 1982 (petitioners had sought and received a 2-month extension to file)

in which they claimed their deduction, petitioner was already aware of the alleged impropriety of the endorsement had spoken to Sandground and had hire: Leyton and the two investigators. We do not think it inappropriate to tae this knowledge into account in determining whether petitioners had a reasonable prospectto recovery at the end of 1981, at least where the date o: which the return for that year was file: and on which the loss deduction was claimed is not that long after the end of the year. See Rainbow Inn, Inc. v. Commissioner, 433 F.2d 640, 644 (3d Cir. 1970), revg. on other grounds a Memorandum Opinion of this Court.

In view of the foregoing, we find

that petitioners have not proved that they did not have a reaxonable prospect recovering their losses during the 1981 tasable year, and are therefore not entitled to a theft loss deduction under section 165[7].

To reflect the foregoing,

Decision will be entered under Rule 155.

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[7] Our reasoning would be equally applicable had petitioners claimed a loss under the other provisions of section 165. See pp. 16-17, supra.

UNITED STATES TAX COURT

MASHUQ AHMAD QURESHI AND RUTH QURESHI Petitoners,	)	DOCKET No.30173-84
v.	)	JUDGE
COMMISSIONER OF INTERNAL REVENUE Respondent.	)	TANNENWALD

APPENDIX H

DECISION

Pursuant to the opinion of the Court filed March 23, 1987, and incorporating the facts recited in the repondent's computation as the findings of the Court, it is:

ORDERED and DECIDED: The there are defeciencies in income tax due from petitioners as follos:

Taxable year Ended	Deficiency Income Tax
1980	$25,967.00
1981	$25,913.00

Theodore Tannenwald
Judge

Entered:

MAY 28 1987

****

SERVED MAY 28 1987

UNITED STATES TAX COURT

WASHINGTON DC 20217

MASHUQ AHMAD QURESHI, M.D.

AND RUTH QURESHI

Petitioner

v. Docket No.30173-84

COMMISSIONER OF

INTERNAL REVENUE

Respondent

APPENDIX (5)

UNITED STATES TAX COURT

APRIL 3, 1987

F I L E D

MOTION FOR RECONSIDERATION OF FINDING OF FACT AND OPINION

COMES NOW THE PETITIONER and moves this honorable court for reconsideration of findings of fact and opinion under rules 160 and 161 of the Rules of Practice and

and Procedure.

Regarding the Tax year 1980 the petitioner submits that Ms. Gislaine Poffe, who was not available to testify furing trial is not available for giving her oral testimony to the effect, that she used all the money received from the petitioner for the business of B.N.T. and that she liquidated the B.N.T. in order to pay off the creditors of B.N.T. before she filed bankruptcy. Her testimony can prove that petitioners' money was totally lost in the unfortunate turn of the B.N.T. business. The petitioner believes, that denial of her live testimony at this stage will be inconsistent with subtantial justice to him.

Regarding the Tax year 1981, the petitioner submits that the fact of the matter is, that even though the petitioner filed a civil action in U.S. DIstrict Court, Washington, D.C. against the Banks and Telephone Corporation of America in December 1982, so far there has be no recovery. Based upon these facts, which exist in the records of that Court, there was not the remotest chance for the petitioner to recover any of his losses in 1981. Because no recovery of loss has occurred in 4 years since the civil action filed in 1982, there was certainly no reasonable chance for recovery of petitioners' loss in 1981. There is no reason to find that the petitioner wilfully did not recover his losses in 1981. In the absence of such a finding, there is every

reason to think that the petitioner had no reasonable chance for recovery of his losses in 1981 and especially so, since the petitioner has made no recovery of his loss upto date, in April 1987.

The language of the statute in IRC 165 (a) is plain, clear, and without any ambiguity, it states that "there shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise".

The statute does not say "compensable" but rather compensated. If "compensable" could have been read in the code, surely the Congress would not have omitted that word therein. Regarding the question, that did the petitioner suffer any loss at all, the facts are patently obvious after nearly 6 years from the date of the loss,

that there has been no recovery. Hence there is no reasonable way to deduce that the petitoners' loss was not relized in 1981 and not complete for the purpose of deduction.

In the totality of the circumstances, the facts prove that there was never any reasonable chance of recovery of the petitioners' loss in 1981 and even there is none to date. As a matter of realism and practicality the petitioner realized a loss of his assets in June 1981, the identifiable event, when Gordon left town, for good.

The petitioner can present records from U.S. District Court, that he has not been compensated for his entire loss so far. Entry of his current record will be

helpful to this court.

The petitioner believes, that, consideration of this matter as a whole will be consistent with substantial jsutice to the petitioner.

Based upon the above, the petitioner requests, that his motion be granted.

Respectfully submitted,

MASHUQ A. QURESHI, M.D.,

petitioner

3701 South George Mason Drive

#110N, Falls Church, VA 22041

(703) 379-8030

CERTIFICATE OF SERVICE

I hereby certify under the penalty of perjury that on 04/02/87, a copy of the foregoing was mailed postage prepaid to: Marshall Feiring c/o Acting District Counsel

Internal Revenue Service

422 Universal North Building

1875 Connecticut Avenue, N.W.

Washington, D.C. 20009

M.A. QURESHI, M.D., Petitioner

UNITED STATES TAX COURT

WASHINGTON D.C. 20217

APPENDIX (6)

UNITED STATES

TAX COURT

JUNE 26, 1987

F I L E D

MASHUQ AHMAD QURESHI

AND RUTH QURESHI

Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent

Docket No.: 30173-84

Judge Tannenwald

MOTION TO VACATE OR REVISE DECISION

COMES NOW the petitioner and moves this honourable court to vacate or revise it's decision entered on May 28, 1987 and allow a new trial under rule 162 of this

court.

REGARDING THE YEAR 1980, the petitioner submits the attached affidavit of Ms. Gislaine Poffe, (Exh.#1), which shows that she spent all the money received from the petitioner and used the car for furtherance of BNT business. She is willing to come and testify for this purpose. Ms. Poffe was unavailable to the court during trial. Since the court's decision was based on lack of her testimony, the petitioner requests the court to consider his burden of proof for the substantiation of his loss discharged. Since the petitioner did suffer the financial loss in his business venture, then there should be such relief granted to him.

REGARDING THE YEAR 1981, the petitioner submits that he had no reasonable prospect

of recovery of his loss in that year. Mr. Gordon was unavailable. NS&T bank had stated in 1981 that Mr. Gordon was authorized to sign for the 20,000.00 check. In 1982, they repeated the same in writing (Exh.#2). Security had stated in 1982 that Mr. Gordon was authorized to endorse the check (Exh.3). The petitioner lost his claim against the banks during hearings and trial.

Regarding the loss of $47,500.00 in the telephone equipment, the attached testimony from Telephone Corporation of America's deposition (Exh.4) shows that they denied having been substantially paid for the equipment. Even though the petitioner claimed that Telephone was paid $24,000.00 for the equipment, the only

proceeds fo sale that are offered by Telephone are $3,952.00 (Exh.#5). Therefore the only reasonable prospect of recovery so far is only $3,952.00 and not $47,500.00 that the petitioner lost on the equipment. In 1980, even this much amount was not recoverable from Telephone.

The petitoner may please not be considered to have had a reasonable chance of recovery of his loss during 1981 simply because he was inquisitive and asserted his claims against the banks and Telephone in 1982, when he had some cogent basis established for his lawsuit. So far in 1987 there has been no recovery. The petitioner lost against his claims except a jury verdict of $17,440.00 and the matter is still the subject of appellate review. The petitioner is not

held to the standard of being an incurable optimist under U.S. v S.S. Dental manufacturing co. 274 U.S. 398 (1927). Under the I.R.S. code 165 (a) and (c) 1, the petitioner is entitled to deduction of his losses in the year of his loss.

The petitioner has rephrased his position stating that he had no reasonable chance of recovery of his losses in 1982. It is hoped that the court will review it.

Based on the above mentioned reasons the petitioner requests that the court vacate and revise it's decision and grant a new trial to enable the petitioner to give further clarification of his position.

Respectfully submitted,

Mashuq Ahmad Qureshi, petitioner
3701 South George Mason Drive
#110 N Falls Church, VA 22041
(703) 379-8030

CERTIFICATE OF SERVICE

I hereby certify under the penalty of perjury that on 6/26/87, a copy of the foregoing was mailed postage prepaid to:
Marshall Feiring c/o Acting District Counsel
Internal Revenue Service
422 Universal North Building
1875 Connecticut Avenue, N.W.
Washington, D.C. 20009

MASHUQ AHMAD QURESHI, Petitioner

UNITED STATES TAX COURT

MASHUQ AHMAD QURESHI

AND RUTH QURESHI

Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent.

Docket No.:30173-84

Judge Tannenwald

AFFIDAVIT

I, Ms. Gislaine Poffe state that I received money from Dr. Mashuq A. Qureshi in years 1979-1980, for the purpose of doing the business of "Bath N Things". I also received a Fiat car for the same purpose. I wish to state categorically that all the money I received for business from Dr. Qureshi was used in and for the

purpose of the said business. The business did not thrive and it became indebited to creditors who had supplied inventory and leased premises. In order to pay the bills it became necessary to sell the inventory at very substantial discount. Therefore most of the bills were attempted for payment by complete liquidation of the inventory. The business premises were vacated in the later part of 1980 after all the business was winded up at a total loss in the venture. Unfortunately I do not trace I filed a petition for bankruptcy on 10.22.80, and included Dr. Qureshi as creditor for his loss of $48,000.00 in the venture. I am willing to come and testify that all funds and car received

from Dr. Qureshi were expanded in the furtherance of business of "Bath N Things". Initially, the business was owned by Dr. Qureshi, and I, Gislaine Poffe, received salary for it's management. Later, in order to enable me to raise funds in the form of loans for maintaining the business, the business was turned over to me, and I expended all the funds received from Dr. Qureshi for the furtherance of the said business. I wish to clarigy that I, Gislaine Poffe was the owner of the "Bath N Things" from the pont the business was turned over to me. I was indebted to Dr. Qureshi for the amount of $48,000.00 at the time of bankruptcy. Although no security was gien by me to Dr. Qureshi for the debt dur to him, I had sincere intentions

to pay him back. That was precisely the reason for including Dr. Qureshi's name as a creditor in the bankruptcy petition. Dr. Qureshi had his dominant business interests in the "Bath N Things" from the point the business was turned over to me. I was indebted to Dr. Qureshi for the amount of $48,000.00 at the time of bankruptcy. Although no security was given by me to Dr. Qureshi for the debt due to him, I had sincere intentions to pay him back. That was precisely the reason for including Dr. Qureshi's name as a creditor in the bankrupty petition.

Dr. Qureshi had his dominant business interests in the "Bath N Things" venture throughout till it was closed, even though

it was not his own business per se at the end.

Respectfully submitted,

I hereby testify under the penalty of

(Ms. Gislaine Poffe)

perjury that the foregoing is
true to the best of my belief.

1305 East Abingdon Drive
#2E
Alexandria, VA 22314

(703) 549-6762

NS & T BANK

Washington, D.C. 20005

March 12, 1982.

M.A.Qureshi, M.D.

611 South Carlin Springs Road

Auite 104

Arlington, Virginia 22204

Dear Dr. Qureshi:

Pursuant to your request of February 22, 1982, we enclose a copy of the Partnership Certificate and authorization and signature card for Medac II General Partnership.

As authorized signer for the partnership account, Richard J. Gordon was also empowered to endorse checks for payment to third parties.

Please feel free to call upon us if we may provide additional information.

Very truly yours,

Robert D. Willey, Jr.

Vice President

Law Office

COLLINS AND ACKER

1825 I Street, N.W.

Washington, D.C.20006

Mr. Joseph Schellhorn

Vice President

National Savings & Trust Company

15th Street & New York Avenue, N.W.

Washington, D.C. 20005

RE: MEDAC GENERAL PARTNERSHIP #2

Dear Mr. Schellhorn:

This is in response to your letter of October 5, 1982 to Warren L. Love of Security National Bank. As qyou know, this office represents Security National Bank and we wish to respond to the matters raised in your letter and the associated documentation.

We have investigated the matter of the endorsement of the subject check from MAQ

Associates to Medac General Partnership #2. The endorsement appears to be that of R.J. Gordon. Mr. Gordon, as you know, has been involved in numerous somewhat less then admirable dealings in the Washington area and is now serving a prison term in a federal penitentiary. Our investigation has revealed that there was, in fact a Medac General Partnership #2 and that R.J. Gordon was authorized to sign on its behalf. Therefore, it is the position of Security National Bank that a proper endorsement was provided on the subject check and that a further endorsement is not necessary.

I hope this answers the questions which your customer has posed and should you wish to discuss it at any time, please do not hesitate to contact me.

Very truly yours,

Charles H. Acker, III

CHA/cr

cc: Warren L. Love

total amount owed to us was $49,394. That is fairly accurate. And if I take $24,000 away from that, it leaves me with an outstanding balance of $25,394 that he still owed to me.

Q. At the time, that he issued the check, how much did he owe you at that minute?

A. $49,394.

Q. Did that amount include the payment due on this Mitel telephone system?

A. It included the Mitel, yes.

Q. How much did you apply for payment toward the Mitel system?

A. Well, I applied $648 of that to the Mitel system and there was taxes on the sale of the system, which I had to

pay to the District of Columbia, which I did so, actually, if you take the tax off, it comes out to be a negative balance, which means he owed me more than what the system was sold for.

Q. What I asked was when you received $24,000 check, how much of the vlaue of that check did you apply toward the purchase of this Mitel system?

A. I just answered that, Doctor.

MR. LIPSHULTZ: He has already said he didn't apply any of it to the system because there was more money owed to TELCOA than this check covered, the outstanding balance was in excess of $24,000. In addition to that, there was approximately $2,000 in taxes that were owed to the District of Columbia Government

that had to be paid on the sale of the system, so that there wasn't enough money to apply, as the open account stood, to the telephone system, the Mitel telephone system and pay the taxes. In point of fact, nothing of the money that Mr. Gordon paid was applied to the telephone system that we are here discussing now. That is what he just testified to.

BY DR. QURESHI:

Q. Can you tell me to which specific items you applied those $24,000?

A. You have copies of all the invoices. If you go through all the invoices chronologically you will see how it was applied. The invoices look like this. (Indicating).

I guess to answer your question, if I

understand it, is that before we installed the Mitel system, he owed me over $20,000.

MR LIPSHULTZ: Wait a minute. I know what meeting with representatives of NS&T (T.399). The bank, in course, abandoned its interest in the telephone equipment (T.117,400). Telcoa, thereafter, received a letter, dated August 7, 1981, from Qureshi's counsel, Plaintiff's Exhibit 17, advising of Dr. Qureshi's claimed interest in the telephone equipment (T.142-143).

After refurbishing and storage, the equipment was resold and installed in the new purchaser's office in 1982 (T. 393). (The resale process will be fully described in the argument below).

Plaintiff, having executed the

$47,500.00 note to NS&T, became obligated to satisfy that debt upon Gordon's desappearance and was paying the loan at least until the time of trial (T. 116). Dr. Qureshi instituted this lawsuit on December 28, 1982.

SUMMARY OF ARGUMENT

Telcoa had a prefected security interest in the telephone hardware that was granted to it by Richard Gordon in their Agreement. This interest had been perfected upon repossession of the equipment. Dr. Qureshi was, at best, an unperfected junior secured creditor who had entered into a "sale-leaseback" arrangement that was intended to provide him with a tax shelter. This arrangement was actually a security agrement between

Gordon and Qureshi. The security interest attached after that of Telcoa and remained unperfected. Telcoa, therefore, had a prior security interest in the telephone equipment. The jury's award of $17,440.00 was excessive and beyond the range of reason. Although the jury found that Telcoa had a right to repossess and resell the telephone hardware it, nevertheless, entered a verdict that was $14,000.00 greater than both the value of the hardware at the time of repossession and the net proceeds from the resale after deducting repossession, storage and preparation for resale expenses and after satisfying the debt. This was contrary to all of the evidence. Under the Uniform Commercial Code as adopted in the District of Columbia, Dr. Qureshi was

entitled to no more than $3952.00 Therefore, a remittitur or remand for new trial on damages is appropriate.

ARGUMENT

1. THE TRIAL COURT ERRED IN DENYING TELCOA'S MOTION FOR A NEW TRIAL WHERE THE VERDICT WAS AGAINST THE WEIGHT OF THE EVIDENCE AND EXCESSIVE

A. Introduction.

In the "best of all possible worlds" [Voltaire, Candide 18 (Bantam Classic, 1981)], Dr. Qureshi would have won the race to obtain possession of the telephone hardware. He could not have obtained possession of the intangibles, such as the installation, wiring, the warranty, maintenance, etc., which were all part of the sales price to Gordon. What

What then would Dr. Qureshi have obtained - telephone hardware worth approximately $14,000.00 when new (T. 184, 356) and worth $3900.00 at the time it was repossessed (T.355). Qureshi was, and

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1988

MASHUQ AHMAD QURESHI

et al

Petitioner

v.

COMMISSIONER OF

INTERNAL REVENUE

Respondent

PROOF OF SERVICE

The petitioner certifies under the penalty of perjury that on 07//9/88 3 copies of this petition were mailed postage prepaid first class to: -

Michael L. Paul

chief Appellate section

Tax Division

Department of Justice

P.O. Box 502

Washington, D.C.20044

MASHUQ AHMAD QURESHI

3701 South George MasonDr.

#110N

Falls Church, VA 22041